

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Civil Action No. 4:11-CV-00094-BO

BRUCE BANNISTER; MAX DUTTON;
and MARION TOWLES;

Towles,

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**APPENDIX TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT REGARDING MAX
DUTTON'S CLAIMS**

A-24

Max Dutton Deposition Transcript Exhibit 45
Letter from M. Dutton to M. Hunter (1/20/2010)

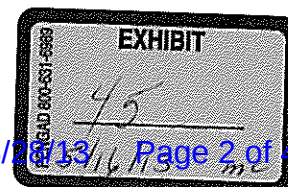
Marlene,

Wednesday, 01/20/2010

Thank you for your prompt response to my request to use the open door and to address my concerns. As you and I have discussed, I am very troubled about the adversarial relationship that exists between my market team and myself. I have worked diligently for this company for almost 17 years and in that time I have had 13 different (district) market managers. Also during that time I have never received any coachings or disciplinary actions against me. If you were to review my HPRO you would see that I have a very good rating. During my tenure, I have taken this store from \$11 million in sales to over \$55 million. My concern has always been for these associates which is represented in the MyShare bonus awards that have been achieved and in my current AOS score of 82%. This score apparently was not meeting company standards as stated within my PIP relating to the AOS score. As I have reviewed the AOS documentation, I see that an 82% was above the company average and also put this store in the top 1% of the company.

Never before have I had to experience such a difficult working relationship with my direct supervisor, nor in my life have I felt as discriminated against as I have this past year. I have tried to determine the root cause for this adverse relationship within my market. My only conclusion is that when there was an opening for a market manager, I had applied based on my qualifications, my interview and approval by Lee Scott, Eduardo Castro-Wright, Mike Duke, Mike Moore and a group of Divisional Vice-Presidents. This interview was set up by then Regional Vice-President, Lance de LaRosa, who recommended me for this interview. Of the five candidates that were chosen to go to Home Office for this intense interview, I was the only Market Manager candidate chosen for consideration. However, when this market was vacated by Tim Jackson, I applied and was not even interviewed or considered for the position even after receiving Home Office approval to be a Market Manager candidate. I believe that this situation became known to my current Market Manager, Eric Litchfield and this was the beginning of an unfavorable and hostile relationship with my market team, it seems like anything I do is not good enough even though we have outstanding results.

I have asked repeatedly for staffing on the management level and for associates within the store and have been totally ignored. I operated this store for four months with myself and only two members of management, one on days and one on nights. Being pushed into this situation I had to use the resources available to me in order to operate this store. I have a group of very talented and dedicated associates who take on leadership roles when asked and can manage effectively. I had to use my key resources during this business critical situation. When I requested for months on end for assistance from my Market Manager, Eric Litchfield and my Market Human Resource Manager Tracey Battle, I received no response. I was under the assumption that your market team was there to be a working partner and to assist cooperatively with a store, but this has not been my experience. Instead all of the disruption this past year has come from the Market level and has hindered this store with their mixed messages causing frustration and confusion amongst the associates. I have worked very hard to keep everyone positive and up beat. In fact, to date the only market team member who responds to any of my requests is my Market Grocery Manager, Mark Mayo. In response to my request for more assistance, this store experienced a six month investigation(s) and the end result was that I went from step one in a coaching process directly to a PIP. I have completed all of the first month's requirement of the PIP, even working



on this from my hospital bed in mid-December. I believe this is indicative of my dedication to this company.

While meeting with my MM and MHMR to review my PIP, I was told that I had completed all the phases thus far and done very well. However, I received a below standard rating as my outs had still not come down to the acceptable level (500 outs, held to a higher standard), I contacted Cathy Busch to address opportunities I was experiencing, for example on August 8th per Cathy Busch head of replenishment, they reduced replenishment to Store #2000 by 40% because of the end of the season business at the beach, this sent our outs through the ceiling, and she agreed this was too much for our store, CORRECTION OF ERRORS. As of today we are 1,089 with 28% being in Department 46 due to company plan of replenishment and I have a plan of action to replenish at store level to the best of our ability. I believe this is not just relative to my store and that it exists throughout the company due to many factors decided at corporate level.

Many of the issues addressed on my PIP go directly to my past performance in this store and never once in working with these thirteen different (MM) management experiences have they been addressed. I question why not one of these issues was ever addressed with these very talented group of managers, or is this part of a ground roots effort to destroy my character, my reputation and my career. I have been accused of not giving proper direction or providing leadership for my associates. I fail to understand this point as well as I have 75% of this team with more than 10 years in the company and I have promoted eight Assistant Managers to Co-Managers and two have even been promoted to Store Managers from Kitty Hawk.

In addressing all the requirements of my PIP I have completed all the specific actions as related to the direction from Market Manager. Each required topic on the improvement plan I have addressed in the past month. These are:

People Leadership -- I have worked closely with all members of management including the ZS and ZMS to ensure they have clear direction daily as I always have done. I have also developed training plans (IDP) for each of these individuals to determine achieving their desired career path. I have also reviewed the required modules and produced written reports on these very informative global learning processes.

People Leadership -- I have named a peer mentor and have worked to develop mentoring activities. Again I have reviewed the required modules relating to this topic.

Thought Leadership and Personal Development -- I have reviewed the Crisp series as required and again produced documents relating to the required topics.

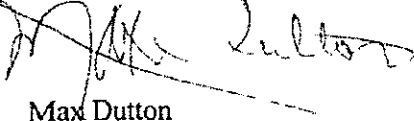
I am confused on several aspects of my PIP. As I understand I am expected to "follow and execute company policies procedures processes in accordance with guidance provided through corporate communications, Event Calendar Plus, playbooks, and leadership meetings as I have always done. Develop leaders and associates assigned to your facility and assist these individuals to grow into greater leadership roles in the company" Yet throughout this PIP I am required to meet expectations OTHER than this stated requirement (i.e. inventory, scorecards, backroom processes, outs, etc.) I have reduced Inventory \$409,732. with a perfect stockroom, my bin accuracy coming out of week # 51 is a 96% and I am being held to a higher standard than my colleagues, and to my understanding the average outs in the market are 1,250 which was told

to me on Eric's conference call and I am at 1,089, yet not understanding why I am not treated like everyone else. This seems to be in direct contrast with the overall stated expectation and not related to requirements of my individual performance. Since I was compliant with all the requirements of the expected behavior, I do not understand receiving a below standard based on outs. Again I question if this is retaliation for my tenure here at this store or some form of discrimination (age, tenure, gender, etc.)

I have documents relating to these performance requirements of the PIP and if you would so desire I can mail you copies in a large mailing container. I have requested to move to another market where I know I will be successful because of the passion and Love I have for our company. I will await your response in this matter and appreciate your consideration of this correspondence.

Thank you for your consideration in this matter.

Sincerely,



Max Dutton

Store #2000

Kitty Hawk, North Carolina 27959

1-252-216-6686 – cell

1-252-441-5119 – home

1-252-261-6011 – store

CC: Bill Simon

CC: Rosalind Brewer